v. *R. A. Patterson Tobacco Co.* (18 Sup. Ct. Rep. 335) is interesting from both these points of view. A statute of Virginia declares that a carrier who accepts goods for transportation to a point beyond his own route is responsible for them as a common carrier, unless he shall have contracted in writing that beyond the terminus of his own line he is to be responsible only as a forwarding agent. The court holds that such a statute merely lays down a rule of evidence, and does not so infringe the right of the carrier to limit his liability by contract as to amount to a regulation of interstate commerce.

The substantial justice of this class of decisions has been recently touched upon. See 11 HARVARD LAW REVIEW, 544. Turning, however, to the other aspect of the question, can it be said as a matter of principle that the true *ratio decidendi* is that which is intimated by the court? It is true that it is commonly said of the clauses in the Statute of Frauds and similar statutes that the requirements laid down by them are those of the law of evidence. It may, perhaps, be questioned whether this is not "obscuring the difference between substance and form;" and whether it would not possibly be more correct on principle to say that these are simply cases of substantive law, couched sometimes, for the sake of convenience, in terms of evidence. To draw an illustration from another field of law, it could hardly be maintained that the requirement of a seal for a covenant or of witnesses for a will belongs to the law of evidence. The requirement is simply a rule of substantive law that a document without a seal is not a covenant, or without witnesses is not a will. It is readily conceivable that there might be an abundance of probative matter by which the agreement of the parties in the one case, or the desires of the deceased in the other, could be established beyond cavil. The proof might be wholly unobjectionable on any of the laws of evidence; and yet all this endeavor would be in vain, not because of any law of evidence, but because the law in regard to instruments makes it necessary that a deed should have a seal and a will witnesses, and these documents do not fulfil the requirements. Similarly in the present case; the real difficulty that the appellant encountered was not that he could not establish what had been agreed upon, but that because of the substantive law of Virginia in regard to carriers the agreement would not do him any good when he had established it; his trouble is "that he is trying to do something which is legally inadmissible, not that he is trying to do a permissible thing by means of evidence which is objectionable."

RESTRAINTS ON ALIENATION BY MARRIED WOMEN. — The recent case of *Brown* v. *McGill*, 39 Atl. Rep. 613, in the Court of Appeals of Maryland, affords an excellent test of the principle upon which the law allows restraints on the alienation of a married woman's separate estate. A *feme sole* in contemplation of marriage settled her own property upon a trustee in trust for herself for life, for her separate use, without power of anticipation. The court decided that this restraint upon alienation was ineffective, it being against public policy to allow a woman thus to place her own property beyond the reach of those who should subsequently become her creditors. Even when, as in Maryland, spendthrift trusts are tolerated, it is well settled that they will not be allowed where the

cestui is himself the settlor. Whether this rule should be relaxed in favor of a married woman was the question before the court.

At one time, before any statutory alterations in the law of married women, the difficulty experienced in some jurisdictions was not in limiting the power of the wife to charge or to alien her separate estate, but in removing, in reference to such estate, her common law incapacity to bind herself by contract. *Price* v. *Bigham*, 7 Har. & J. 296, 317. The husband's control was expressly excluded by the terms of the settlement; the wife was regarded as possessing no will of her own. Consequently, effect was readily given to the clause against anticipation. If such restraints are to be thus explained as a common-law disability of coveture which equity has not removed, it may well be urged, now that most of such incapacities have been abolished by statute, that the restraint on alienation should be enforced only when it would be effective if the *cestui que trust* were unmarried. Judged by this criterion, the clause prohibiting alienation, in the principal case, would as above stated be clearly inoperative. By this line of reasoning, it may, perhaps, be possible to support the decision, as well as similar adjudications in Massachusetts and Pennsylvania. *Jackson* v. *Van Zedlitz*, 136 Mass. 342. In those States, apparently no distinction is taken between married women and persons *sui juris*, so far as the validity of limitations on the power of alienation is concerned.

If this view were adopted in jurisdictions in which spendthrift trusts have obtained no foothold, the clause against anticipation, even a settlement to the separate use of a married woman, would, of course, always be held invalid. This result has been avoided, and such restraints enforced, on the ground that they are necessary to prevent the husband from obtaining the benefit of his wife's property by means of undue influence. The historical development of the subject in England gave support to this theory. The doctrine of the separate use was established in that country long before the prohibition of anticipation was introduced by Lord Thurlow. Consequently, that restriction was looked upon as a further "violation of the laws of property," which could be justified only as necessary to protect the *cestui* from the threats or persuasion of her husband. *Tullett* v. *Armstrong*, 4 Myl. & C. 377, 405. This danger being equally great where the wife is herself a settlor, the question of the principal case has, without hesitation, been decided in favor of the restraint. *Clive* v. *Carew*, 1 Johns. & H. 199, 205.

This English rule which allows a woman in contemplation of marriage to place her property in perfect security from the cupidity of her husband and from her own generosity, is more consonant with the spirit of our equity jurisprudence. It is remarkable that this protection which is granted in England, where restraints on alienation are viewed with hostility, should be refused by those courts in this country which regard spendthrift trusts without disfavor. The result is an instance of the confusion which departures from settled principles of law usually occasion.

IMPLIED RESERVATION OF EASEMENTS. — When a land-owner sells a portion of his estate by absolute conveyance, if no access remains to the part retained except through the part sold, all jurisdictions hold that a way is reserved or regranted by implication. This rule is based on the